

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Paperkidd Productions & Publishing,)
Jarrell D. Curne) EB Docket No. 18-140
Complainants,) File No. EB-18-MD-003
v.)
Verizon Wireless,)
Defendant.)

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 2019

Released: February 26, 2019

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this proceeding, Complainants Jarrell D. Curne and Paperkidd Productions & Publishing (Curne) filed a formal complaint against Verizon Wireless (Verizon) alleging that Verizon overcharged Curne with respect to his newly established business account and that Verizon engaged in unlawful discrimination. For the reasons discussed below, we deny the Complaint because Curne failed to prove that Verizon violated the Communications Act or the Commission’s rules or orders, and, in any event, Verizon fully compensated Curne for any alleged overcharges.

II. BACKGROUND

2. Verizon provides wireless telecommunications services. Curne is a resident of Missouri and previously did business as Curne Investments LLC. In 2015, Curne changed the name of Curne

1 Formal Complaint of Paperkidd Productions & Publishing and Jarrell D. Curne, File No. EB-18-MD-003, Proceeding Number 18-140 (filed Apr. 30, 2018) (Original Complaint); Amended Formal Complaint of Paperkidd Productions & Publishing and Jarrell D. Curne, File No. EB-18-MD-003, Proceeding Number 18-140 (filed June 15, 2018) (Amended Complaint). The Original Complaint and Amended Complaint are referenced collectively as the “Complaint.” See also Answer of Cellco Partnership d/b/a Verizon Wireless, File No. EB-18-MD-003, Proceeding Number 18-140 (filed July 18, 2018) (Answer); Response for Opposition to Motion to Dismiss, File No. EB-18-MD-003, Proceeding Number 18-140 (filed July 21, 2018) (Reply).

2 Answer at 10, para. 12.

3 Amended Complaint at 8, para. 20; Answer at 12, para. 20, Legal Analysis at 1-2, Exh. 7.

Investments LLC to Paperkidd Productions & Publishing.⁴ Prior to the events that resulted in this Complaint, Curne held a consumer account with Verizon Wireless.⁵

3. On March 15, 2018, Curne attempted to open a business account with Verizon,⁶ and used the name “Curne Investments LLC” in the information submitted to Verizon.⁷ Following its standard procedure, Verizon reviewed the documents to verify, among other things, the entity’s corporate ownership status but was unable to validate and activate the account under the name Curne Investments LLC.⁸ As a result, Verizon temporarily suspended the account pending receipt of documentation to provide current information regarding the company (then Paperkidd Productions & Publishing, LLC).⁹

4. On March 23, 2018, Curne attempted to provide the necessary information in person at a Verizon store in Olathe, Kansas.¹⁰ Curne was asked to leave the store, however, after directing profane language at the store’s employees, further complicating Verizon’s efforts to provide Curne with his desired services and equipment.¹¹ In addition, Verizon acknowledged that a clerical error caused Curne to have to submit the paperwork a second time, causing some delay and inconvenience.¹² Curne subsequently provided documentation to confirm that Paperkidd Productions & Publishing, LLC was the entity ordering service, and the account was activated on March 26, 2018 and has been in use since that time.¹³

5. On April 30, 2018, Curne filed a Complaint against Verizon under Section 208 of the Communications Act of 1934, as amended (the Act), alleging violations of Sections 201(b) and 202(a),¹⁴

⁴ Original Complaint at 23 (Amendment of Articles of Organization).

⁵ See Amended Complaint at 8, paras. 20-21; Answer at 12, para. 20.

⁶ Original Complaint at 11, para. 21; Amended Complaint at 9, paras. 22; Answer, Legal Analysis at 1-2; Answer, Exh. 7.

⁷ Answer, Exh. 7. Exh. 7 to the Answer is the account agreement in the name of Curne Investments LLC, dated March 15, 2018, and signed by Curne.

⁸ Answer at 12-13, para. 20; Answer, Exh. 6 (Letter from Consumer & Governmental Affairs Bureau, FCC to Jarrell Curne (dated Apr. 25, 2018)).

⁹ See *id.*

¹⁰ Original Complaint at 27 (Letter from Jarrell Curne to Verizon, dated Mar. 26, 2018).

¹¹ See, e.g., Complaint at 30 (According to Curne, “I got very frustrated at this point and I yelled back at [the Verizon store employee] ‘B[****], don’t say anything else to me!’”); see also *id.* at 55 (Letter from Verizon to Jarrell Curne (dated Mar. 30, 2018) (stating that Curne “made a threat of bodily harm against [Verizon’s] employees”); Reply at 13-14.

¹² Answer, Exh. 6.

¹³ Answer at 13, para. 20; Answer, Exh. 1 at 10-15 (Verizon Invoice to Paperkidd Productions & Publishing, LLC (dated Apr. 14, 2018)).

¹⁴ 47 U.S.C. §§ 201(b), 202(a), 208. The Amended Complaint also references Sections 205, 206, 207, 209, 215, 216, and 217, as a basis for jurisdiction and liability. Amended Complaint at 3, 4, 6. None of these provisions, however, provide an independent ground for the relief sought against Verizon. The Complaint also raises multiple non-Communications Act claims, such as a breach of contract claim for terminating the agreement, and a claim that Civil Rights were violated. Original Complaint at 11-12, para. 21. See, e.g., Amended Complaint at 11 (referencing the “Civil Rights Act of 1964”). Under Section 208 of the Act, the Commission has authority to adjudicate claims alleging that a carrier has violated the Act itself. 47 U.S.C. § 208 (authorizing the Commission to adjudicate complaints regarding “anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof”). Because these claims do not allege that Verizon, in its role as a carrier, acted or failed to act in contravention of the Act, they are dismissed. See, e.g., *Illinois Bell Tel. Co. v. AT&T*, Order, 4 FCC Red 5268, 5270, para. 18 (1989) (“The complaints do not allege that AT&T, in its role as a carrier, acted or

followed by an Amended Complaint on June 15, 2018.¹⁵ Curne alleges generally that Verizon violated the Act by engaging in “unjust or unreasonable charges [and] practices” by overcharging for certain services and equipment, and unspecified discrimination.¹⁶ Curne seeks damages of \$101,500,000.¹⁷

III. DISCUSSION

6. We deny Curne’s Complaint because it does not demonstrate that Verizon violated the Act or any Commission rule or order. In a formal complaint proceeding under Section 208 of the Act, the complainant bears the burden of proof to establish a violation.¹⁸ To prevail, the complainant “must demonstrate by a preponderance of the evidence that the alleged violation of the Act or the Commission’s rules actually occurred.”¹⁹ Reviewing the record here, we find that Curne makes only vague and unsubstantiated allegations and does not provide any evidence to show Verizon violated the Act.

7. First, Curne has not met his burden of proof with regard to alleged overcharges in violation of Section 201(b) of the Act.²⁰ Curne claims that Verizon overcharged his company by: (1) charging for five lines instead of four;²¹ (2) charging for a service plan more expensive than he ordered;²²

failed to act in contravention of the Communications Act Such allegations do not state a cause of action under the complaint procedures and are properly dismissed.”).

¹⁵ Amended Complaint. The Original Complaint contains factual allegations and attachments not included in the Amended Complaint. Because Curne is appearing *pro se*, and to ensure a full hearing on the issues, we consider both pleadings as part of the record in this case. *See, e.g., In the Matter of David S. Poole and Michigan Multimedia & Telecommunications, Inc. v. Michiana Metronet, Inc. and Lucas J. Caruso*, Memorandum Opinion and Order, 15 FCC Rcd 9944, 9947, para. 8 (1999) (affording to a *pro se* complainant “considerable flexibility with respect to the procedural rules governing formal complaint proceedings).

¹⁶ Amended Complaint at 3, para. 1.

¹⁷ Amended Complaint at 13, para. 34; *see also* Original Complaint at 18, para. 39 (requesting \$113,500,000 in damages). Curne further asks the Commission to initiate an investigation of Verizon’s conduct and to impose forfeiture penalties. Original Complaint at 18, para. 30; Amended Complaint at 12, para. 31. Forfeitures are not a remedy in formal complaint proceedings. *See, e.g., In the Matter of JMJ Associates, Inc.*, Request for Reconsideration, 14 FCC Rcd 15398, 15400, para. 6 (1999) (“Forfeitures and other Commission-initiated enforcement actions are not, however, available as remedies to complainants in informal or formal complaint proceedings.”).

¹⁸ *See* 47 U.S.C. § 208; *see, e.g., Directel, Inc. v. Am. Tel. and Tel. Co.*, Memorandum Opinion and Order, 11 FCC Rcd 7554, 7560–61, para. 14–15 (Common Carrier Bur. 1996); *see also, e.g., Consumer.net, LLC v. Verizon Communications, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 2737, 2740, para. 10 (Enf. Bur. 2010) (“It is well established that the Complainant has the burden of proof in a formal complaint proceeding under section 208 of the Act. Thus, to prevail, a Complainant must demonstrate by a preponderance of the evidence that the alleged violation of the Act or the Commission’s rules actually occurred.”) (citations omitted); *Amendment of Rules Governing Procedures to be Followed when Formal Complaints are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997); *Amendment of Rules Concerning Procedures to be Followed when Formal Complaints are Filed Against Common Carriers*, Report and Order, 8 FCC Rcd 2614 (1993). *See generally* 47 CFR §§ 1.720–1.735. The references in this order to the formal complaint procedural rules mean the rules in effect when Curne filed the Original Complaint on April 30, 2018.

¹⁹ *See, e.g., Consumer.net, LLC and Russ Smith v. Verizon Commc’ns, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 2737, 2740, para. 10 (2010).

²⁰ Section 201(b) of the Act requires that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable” 47 U.S.C. § 201(b).

²¹ Original Complaint at 1, para. 20.

²² Original Complaint at 10, para. 19.

and (3) and charging for equipment for which Verizon allegedly agreed to waive the charges.²³ The record reflects that Curne ordered from Verizon, and subsequently used, multiple lines and pieces of equipment.²⁴ Curne does not, however, provide evidence of, or even explain, which lines he ordered, or evidence showing which services he ordered (or did not order).²⁵ Nor does Curne provide any proof that Verizon agreed to waive any equipment charges. Rather, Curne provides only partial bills that do not support his claims, and states, without support, that he was overcharged.²⁶

8. Moreover, we find that, even if the Complaint had shown Verizon overcharged Curne for any equipment or service, Verizon has made reparations in full for these claims. Section 208 of the Act provides in relevant part that if the defendant common carrier “shall make reparation for the injury alleged to have been caused, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of.”²⁷ Here, without admitting liability, Verizon: (1) credited Curne’s account for all charges related to the fifth line;²⁸ (2) switched Curne’s service to a lower rate plan and issued credits for the difference in the plans’ charges (including credits for the days the account was suspended pending validation);²⁹ and (3) issued credits for the equipment at issue, effectively giving Curne over \$1,000 of equipment free of charge.³⁰ Verizon argues, therefore, that because all the potential Communications Act-related claims have been resolved in full, “there is nothing more for the Bureau to do and the [Complaint] should be dismissed.”³¹ We agree and find that Verizon has made full reparations for any claims arising under the Act.³²

²³ Original Complaint at 10, para. 19; Answer, Legal Analysis at 5.

²⁴ See, e.g., Original Complaint at 10, 25-27; Answer, Exh. 3.

²⁵ 47 CFR § 1.720(c) (“Facts must be supported by relevant documentation or affidavit.”). In addition to lacking factual support, the Complaint is devoid of legal support. See 47 CFR § 1.721(a)(6) (requiring formal complaints to contain a legal analysis relevant to the claims). Although Curne attaches some documents to the Complaint – including limited portions of Verizon’s bills, correspondence with Verizon, and informal complaint-related correspondence – none of these materials show that Verizon acted unreasonably with regard to any billing practices. See Original Complaint at 46, 47, 57-66, 69, 74.

²⁶ Original Complaint at 46, 47, 74. Curne also suggests that Verizon somehow unlawfully “terminated” his account. Original Complaint at 11, para. 20. It is undisputed, however, that Curne’s account was activated on March 26, 2018 and has been in use since that time. Answer at 13, para. 20.

²⁷ 47 U.S.C. § 208(a).

²⁸ Answer at 13, para. 20; Answer, Exh. 1 at 2 (reflecting no account balance prior to March 26, 2018). Verizon credited Curne’s account for all days between March 15, 2018 and March 26, 2018, including the periods that the account was in use. See *id.*

²⁹ Answer at 4-5; Answer, Exh. 3 at 1-7 (Verizon Invoice to Paperkidd Productions & Publishing, LLC (dated June 14, 2018)); Reply at 6 (acknowledging “account adjustments”).

³⁰ Answer at 4-5; Answer, Exh. 4 at 1-2 (Verizon Invoice to Paperkidd Productions & Publishing, LLC (dated July 14, 2018)). In addition to the free iPad device Curne received, Verizon also provided him with a free iPad pencil. See Answer at 5, n.10.

³¹ Answer at 6.

³² Curne, who is appearing *pro se* and is not an attorney, seeks attorneys’ fees. Amended Complaint at 12-13, paras. 32, 34. The Commission does not have the authority to award attorneys’ fees. See, e.g., *In The Matter of Ascom Communications, Inc. v. Sprint Communications Company, L.P. and New York Telephone Company*, Memorandum Opinion and Order, 15 FCC Rcd 3223, 3236, para. 31 (2000) (“[W]e have no authority to award attorneys’ fees and costs”). Curne also submitted a motion for Chairman Ajit Pai to recuse himself from participating in this proceeding. Amended Formal Complaint of Paperkidd Productions & Publishing and Jarrell D. Curne’s Motion for Recusal, File No. EB-18-MD-003, Proceeding Number 18-140 (filed June 15, 2018). Because this Memorandum Opinion and Order is issued under delegated authority, the motion is not properly raised and we do not reach this request.

9. Second, the Complaint fails to establish a case of discrimination in violation of Section 202(a) of the Act.³³ A complainant alleging discrimination under Section 202(a) must demonstrate that (1) there are “like” services at issue; (2) there are differences in the terms and conditions pursuant to which the services are provided; and (3) the differences are not reasonable.³⁴ Although Curne points to a dispute in a Verizon store that he claims inconvenienced him,³⁵ and claims to have been overcharged, these allegations, even if credited, do not amount to evidence that the terms and conditions under which Verizon provided service to Curne were in fact different from the terms and conditions under which Verizon provided “like” services to other customers. In sum, the record in this proceeding fails to present sufficient evidence to convince us that Verizon’s actions were unreasonable or discriminatory under the Act. Consequently, we deny the Complaint.

IV. ORDERING CLAUSE

10. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), 201, 202, and 208 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201, 202, 208, and sections 1.720-1.735 of the Commission’s rules, 47 CFR §§ 1.720-1.735, the Complaint **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

³³ Section 202(a) makes it “unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service” 47 U.S.C. § 202(a).

³⁴ See, e.g., *Competitive Telecommunications Ass’n v. FCC*, 998 F.2d 1058, 1061 (D.C. Cir. 1993); *Orloff v. Vodafone AirTouch Licenses*, Memorandum Opinion and Order, 17 FCC Rcd 8987, 8993–94, para. 14 (2002), review denied, *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003), cert. denied, 542 U.S. 937 (2004).

³⁵ See Amended Complaint at 13, para. 34 (stating “Verizon Wireless has inconvenienced Complainants on multiple occasions, this inconvenience is considered discrimination”); see, e.g., *id.* at 9, para. 22. Curne also claims that his service was “terminated,” but the record shows only that the account was temporarily suspended pending validation. Original Complaint at 11, para. 20; Answer at 13, para. 20.